



UNITED STATES ENVIRON
WASHINGTON

Appendix II

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OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

OSWER Directive 9355.7-02A

MEMORANDUM

SUBJECT: Supplemental Five-Year Review Guidance.

FROM: Henry L. Longest II, Director
Office of Emergency and Remedial Response *HL*

TO: Director, Waste Management Division
Regions I, IV, V, VII, and VIII
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, VI, and IX
Director, Hazardous Waste Division
Region X

PURPOSE

The purpose of this memorandum is to amend OSWER Directive 9355.7-02 (May 23, 1991), "Structure and Components of Five-Year Reviews," by providing supplemental guidance on five-year reviews. The supplemental guidance provides necessary clarifications as well as new direction to streamline the five-year review process and ensure the effective and efficient use of program resources. Specifically, this supplemental guidance: changes the trigger date for policy reviews to construction completion; provides a prioritization plan for conducting five-year reviews when Regions cannot conduct all required reviews; clarifies responsibility for conduct of five-year reviews at Federal facilities; restates that the five-year review covers all operable units (OUs) at a site; and, introduces a streamlined Type Ia review at sites where construction is ongoing, and provides model language.

The policies set forth in this Directive are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this Directive, or to act at variance with the Directive, on the basis of an analysis of specific circumstances. The Agency also reserves the right to change this Directive at any time without public notice.

DISCUSSION

A. Timing of Five-Year Reviews

Statutory Reviews. Regions should complete statutory reviews within five years of the initiation of the first remedial action (or operable unit) at a site. The date of "initiation of remedial action" is the date the FRP or contractor mobilizes to start construction. This date is a Comprehensive Environmental Response and Liability Information System (CERCLIS) subevent, "RA On-Site Construction."

Trigger dates - Statutory Reviews. Headquarters determines, based on CERCLIS data that Regions enter, the trigger date for statutory five-year reviews. Should the Region disagree with that date, it should notify the State and Local Coordination Branch (SLCB) that it believes a date change is appropriate and update CERCLIS as necessary. When no planned or actual mobilization (or RA On-Site Construction) date for statutory sites is listed in CERCLIS, SLCB will use the following hierarchy of dates listed in CERCLIS to determine five-year review trigger dates: the (planned or actual) contract award date, the (planned or actual) remedial action start date, or the appropriate ROD date. In no event will SLCB use a date before the first appropriate ROD. A ROD is "appropriate" only if it triggers a five-year review. Removal dates are never triggers. At an enforcement site, a remedial action start date is generally not available because of the absence of Fund money. Therefore, the trigger date at an enforcement site will be the (planned or actual) RA On-Site Construction date, the contract award date, or the ROD date, as appropriate.

Trigger dates - Policy Reviews. Effective with the issuance of this directive, except for sites at which five-year reviews have already been conducted, Regions should initiate policy reviews within five years of the completion of physical construction at a site. EPA is making this change to accord with a proposed statutory change which would establish completion of physical construction as the trigger date for all five-year reviews. For purposes of triggering five-year reviews at policy sites, "completion of physical construction" means the date a site qualifies for listing on the Construction Completion List (CCL). A site qualifies for listing on the CCL at the time of signature of the preliminary or final Close Out Report (COR), the final no action ROD, or deletion notice. Completion of physical construction is also documented as a CERCLIS event.

Early or Late Reviews. A Region may choose to conduct a five-year review before the time it is due. In that case, the next five-year review will be due within five years of the completion of the early review. When a Region conducts a five-year after the time it is due, the next five-year review is due within five years of the time when it was originally required. For example, a review due in 1993, but conducted in 1992, will be

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due again by 1997. A review due in 1993, but conducted in 1995, will be due again by 1998.

B. Federal Facilities

EPA conducts the five-year review. EPA is responsible for conduct of the five-year review at Federal facilities on the National Priorities List (NPL) where EPA and the pertinent agency have not entered into an agreement specifying which agency should perform the review.

Federal agencies conduct the five-year review. Executive Order 12580 delegates responsibility for five-year reviews of other Federal facilities where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of the department, including vessels bare-boat chartered and operated, as follows: 1) the departments of Energy and Defense (whether or not the site is on the NPL); 2) other Federal agencies or departments for non-NPL Federal facilities; and, 3) the Coast Guard for NPL and non-NPL sites where the release or threatened release involves the coastal zone, Great Lakes waters, ports, and harbors.

When EPA guidance applies. EPA general requirements with respect to five-year reviews are applicable to all Federal facilities on the NPL. See CERCLA section 120(a)(2). Other Federal agencies should submit to the EPA Regional office draft certifications of protectiveness along with supporting information collected during the review. They should obtain EPA's concurrence in accordance with existing interagency agreements.

Who should pay for the review. Federal agencies are responsible for the costs of all five-year reviews at their facilities. When EPA incurs substantial expenses (e.g., for data review and analysis, or oversight) in connection with a five-year review being conducted pursuant to an interagency agreement, that agreement should require the other agency to reimburse EPA for those expenses.

NPL sites - copy distribution of five-year reviews. Annual Reports. Regions should send copies of final reviews conducted by Federal agencies at NPL sites to SLCB. Also, Federal agencies are responsible for annually reporting to Congress the reviews conducted at their own facilities, and actions recommended as a result of such reviews.

C. Prioritizing Five-Year Reviews

Approach. There is a growing backlog of uncompleted five-year reviews and Regional resources are finite. Therefore, this

guidance provides Regions with a plan to prioritize five-year reviews in any year in which a Region cannot conduct all required reviews. The approach is based on the premise that statutory reviews must be completed first. After completing statutory reviews, Regions should conduct policy reviews at sites where the potential for an unseen release is greatest, i.e., those sites with little or no on-site lead agency presence. The plan is as follows:

The first priority should be all statutory five-year reviews; the second priority should be policy five-year reviews at sites where the lead agency has completed remedial action and is no longer on-site (e.g., sites with no long-term remedial action); the third priority should be all remaining policy sites (e.g., sites with an ongoing long-term remedial action). Completion of remedial action for prioritization purposes occurs at signature of the preliminary COR for most sites. However, long-term remedial actions sites (i.e., sites at which remediation takes five years or more to complete) are considered third priority sites for purposes of prioritization until the cleanup levels are met and the final COR is signed. Long-term remedial action sites generally involve ground or surface water restoration, but may include other remedies taking five years or longer to complete, e.g., certain soil remediation technologies.

D. One Review Covers All Operable Units.

Sites subject to five-year reviews with multiple remedies or operable units should conduct a five-year review for the entire site, and not separate five-year reviews for each remedy or operable unit. Because some operable units may be active and some inactive, Regions should cover each operable unit in the review as appropriate to its progress in remediation. The five-year review, however, will be triggered by the first operable unit giving rise to a five-year review. Discussion of subsequent remedies or operable units should be incorporated into the first five-year review conducted or in future reviews, as appropriate.

E. Five-Year Reviews at Sites Where Remedial Action is Ongoing - Type Ia Reviews

EPA has heretofore developed three types of review. See OSWER Directive 9355.7-02, May 23, 1991, for a more detailed explanation of those types. All types stress a review of the protectiveness of the remedy. A Type I review is the most basic type of evaluation of protectiveness, and is appropriate for most completed sites. A Type II review contemplates recalculation of the risk, and is appropriate only if warranted by site-specific circumstances. A Type III review involves a new risk assessment, and should be utilized only when site-specific circumstances show

it to be necessary.

This memorandum introduces the Type Ia review to streamline the five-year review process at sites where remedial action is ongoing and to reduce resource needs for such reviews. A Type Ia review is a modified version of a Type I review. The Type Ia emphasizes only relevant protectiveness factors, analyzed at a standard of review appropriate for sites where response is ongoing. Sites generally qualify for a Type Ia review until construction is completed and the site qualifies for listing on the CCL.

However, a Type Ia review should not be used when site-specific circumstances indicate the appropriateness of a higher level of review. Examples include sites where: an operable unit has long been completed and work on the final operable unit may not be finished for a long time; or the Region knows that an applicable, or relevant and appropriate standard (ARAR) for a specific chemical (e.g., dioxin) fails to meet new health standards; planned response costs or operation and maintenance costs may have dramatically increased, indicating potential failure of one or more components of the remedy; or any other circumstances indicate that the site may no longer be protective of human health and the environment, and therefore that a higher level of review is warranted.

The chart below illustrates steps Regions should take during a Type Ia review at an ongoing site contrasted with the more extensive requirements at Type I completed sites.

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Information	TYPE I Completed Sites		TYPE Ia Active Sites	
	Task	Hours	Task	Hours
<u>Document Review</u>		35-40		10-15
ROD	X			
ROD Summary	X		X	
Settlement Agreement	X			
O&M Information	X			
Monitoring Information	X		X	
<u>Standards (ARARs) Review</u>		25-30		0
Changing Standards	X			
Risk Evaluation	X			
<u>Site Visit</u>				
Visual Inspection	X	25-35		0
o Site				
o Institutional Controls				
Interviews	X			
o Neighbors				
o Contractors				
o Local Govern.				
<u>Report - Contents:</u>		30-35		20-25
Introduction	X		X*	
Remedial Objectives	X		X	
ARARs Review	X			
Summary Of Site Visit	X			
Areas of Noncompliance	X		X	
Recommendations	X		X	
Statement of Protectiveness	X		X*	
Next Review	X		X*	
TOTALS		160-170		30-40

* Standard language provided in model.

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Document Review. Document review for a Type Ia review is designed to acquaint the reviewer with the ongoing remedial action and should be less extensive than for a Type I review. A Type Ia review should only require the reviewer to refer to the ROD Declaration for information describing the site and remedial action. The reviewer should conduct more extensive document reviews, e.g., of the ROD itself, O&M plans, any Preliminary or Interim Close Out Report, or of the underlying settlement agreement, only as site-specific circumstances show to be necessary. The reviewer may summarize monitoring plans and data, if available, but should not attach voluminous monitoring reports to any five-year review.

Standards or ARARs Review. Standards review in a five-year review context means the review of ARARs, and of risk considerations. For an ongoing remedial action, it is not necessary to review ARARs, nor in most circumstances to recalculate the risk or perform a new risk assessment. When changes in ARARs necessitate further action, EPA may at any time implement such action through an Explanation of Significant Differences (ESD), ROD amendment, amendment to a consent decree or order, or other enforceable document, as appropriate.

Site Visits, Institutional Controls, Community Relations. A site visit is normally an integral part of a five-year review. However, special site visits at sites where remedial action is ongoing are unnecessary, since visual inspection is ongoing at such sites. Regions may summarize current conditions at the site based on other regular visits to the site. For example, because institutional controls may not be in place at ongoing remedial actions, Regions may document implementation and analysis of institutional controls through future annual site reports. It is not necessary to document community relations activities in the report because those activities are documented elsewhere in the site file.

Report. The final report should contain an introduction; a discussion of remedial objectives, areas of noncompliance with those objectives; recommendations; a statement on whether the remedy remains protective; and notice of the next five-year review, if applicable.

IMPLEMENTATION

Effective with the issuance of this directive, Regional offices should implement the following actions:

(1) review the attached list of sites that require review in FY 94 and FY 95 (including reviews not completed in FY 92 and FY 93), and notify SLCB of appropriate changes;

(2) enter into CERCLIS the mobilization date for sites

requiring statutory review;

(3) enter into CERCLIS revised trigger dates for policy review sites;

(4) prioritize reviews of sites when it is not possible to conduct all required reviews;

(5) use the Type Ia review at appropriate sites; and

(6) notify SLCB of trigger dates or other data incorrectly listed.

In addition, Regions should continue to insert statements in new RODs declaring whether a site is subject to five-year reviews, update CERCLIS trigger dates in a timely manner, provide to SLCB copies of approved five-year reviews documenting your performance of such reviews, and request assistance from SLCB or your Regional Five-Year Review Coordinators when you have questions.

If you have any questions concerning this memorandum, please contact Hugo Fleischman of my staff at (703) 603-8769.

cc: Chris Sebastian, Region 2 Five-Year Review Coordinator
Walter Graham, Region 3 Five-Year Review Coordinator
Jennifer Wendell, Region 5 Five-Year Review Coordinator
Norval Schoenhals, Region 8 Five-Year Review Coordinator

Attachments

Attachment I

**U.S. Environmental Protection Agency
Region XI
Hazardous Waste Management Division
Five-Year Review (Type Ia)
Priarose Landfill (New Suffolk, East Carolina)**

I. Introduction

Authority Statement. Purpose. EPA Region XI conducted this review pursuant to CERCLA section 121(c), NCP section 300.400(f)(4)(ii), and OSWER Directives 9355.7-02 (May 23, 1991), and 9355.7-02A (-----, 1994). It is a (statutory)/(policy) review. The purpose of a five-year review is to ensure that a remedial action remains protective of public health and the environment and is functioning as designed. This document will become a part of the Site File. This review (Type Ia) is applicable to a site at which response is ongoing.

Site Characteristics. [Insert brief description of the physical characteristics of the site and the site history, or refer to the ROD summary. Attach the ROD summary as an appendix if referenced.]

II. Discussion of Remedial Objectives; Areas of Noncompliance.

[Insert highlights of important facts from the ROD Summary concerning the objectives of the remedial action. Note any substantial aspect of the remedial action which fails to conform to remedial objectives. Note the progress of the work and discuss activities not yet implemented. Refer to the ROD for a discussion of applicable or relevant and appropriate requirements (ARARs). It is not necessary to reevaluate ARARs for a Type Ia review. Include summaries of monitoring information, if available, and if appropriate. Do not attach monitoring reports or other voluminous data summaries to the five-year review.]

III. Recommendations.

[Note any recommendations for future response action brought to light by the five-year review (e.g., recording institutional controls, repairing fences, or correcting soil erosion). Identify corrective actions required as a result of the review (e.g., initiation of monitoring, operation and maintenance, etc.)]

IV. Statement on Protectiveness.

I certify that the remedy(ies) selected for this site

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remains protective of human health and the environment. Alternative. The remedy is not at this time protective of human health and the environment. EPA is taking steps to make the remedy protective. (Summarize steps to be taken or refer to Recommendations.)

V. Next Five-Year Review.

The next five-year review will be conducted by (generally five years from date of this review). Based on (if the Region is delaying or skipping a future review, explain the rationale here).

Alternative. Because the site affords unlimited use and unrestricted exposure, I conclude that no further five-year reviews are necessary. The site is protective of human health and the environment and likely to remain so.

Robert Nordegiaacomo, Director
Hazardous Waste Management Division, Region XI